

Message Text

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ACTION EA-09

INFO OCT-01 ISO-00 MC-02 EUR-12 CIAE-00 DODE-00 PM-05

H-01 INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01

SP-02 SS-15 USIA-06 AID-05 COME-00 EB-07 FRB-03

TRSE-00 XMB-02 OPIC-03 LAB-04 EPG-02 SIL-01

OMB-01 STR-04 FTC-01 /103 W

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R 190500Z JUL 77

FM AMEMBASSY JAKARTA

TO SECSTATE WASHDC PRIORITY 2551

INFO AMCONSUL MEDAN

AMCONSUL SURABAYA

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E.O. 11652: N/A

TAGS: ETRD, EINV, ID

SUBJECT: IBM DIFFICULTIES IN INDONESIA

1. SUMMARY: IBM'S FUTURE PRESENCE IN INDONESIA IS IN DOUBT IN VIEW GOI RELUCTANCE TO MAKE EXCEPTION UNDER ITS TRADING LAW TO PERMIT IBM TO CONTINUE TO HANDLE COMPUTER SALES, COMPUTER LEASING, AND MAINTENANCE. COMPANY HAS MADE EFFORTS DURING PAST NINE MONTHS TO GAIN EXEMPTION FROM INDONESIAN LAW NO. 6 WHICH STIPULATES THAT TRADING ACTIVITIES OF ALL FIRMS SHALL BE CARRIED OUT BY INDIGENOUS PERSONS BY JANUARY 1, 1978. SIEMENS OF GERMANY FACES SIMILAR PROBLEM, IS CLAIMING, SO FAR WITHOUT SUCCESS, EXEMPTION UNDER FRG-INDONESIAN BILATERAL AGREEMENT. ACCORDING LATEST DEVELOPMENTS, MINISTER OF TRADE UNABLE FIND SUPPORT WITHIN GOI FOR AN EXCEPTION WHICH IBM FEELS IS JUSTIFIED ON BASIS HIGH TECHNOLOGY OF ITS BUSINESS. IBM GLOBAL MARKETING POLICY APPARENTLY DOES NOT PERMIT USE OF LOCAL AGENTS FOR COMPUTERS. IBM HAS ASKED ME TO INTERVENE. THIS MESSAGE OUTLINES CIRCUMSTANCES LEADING UP TO PRESENT AND REQUESTS DEPARTMENT'S GUIDANCE. END SUMMARY.

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2. BACKGROUND:

AS PREVIOUSLY REPORTED IN VARIOUS MEMCONS (COPIES AVAILABLE IN EA/TIMBS), GOI LAW REQUIRING THAT ALL DOMESTIC TRADING ACTIVITIES BE IN THE HANDS OF INDONESIANS BY JANUARY 1, 1978 THREATENS IBM'S FUTURE IN INDONESIA.

ASIDE FROM TYPEWRITERS AND OFFICE EQUIPMENT, IBM'S PRINCIPAL BUSINESS (80 PERCENT) HERE IS IN THE RENTAL AND MAINTENANCE OF COMPUTERS. IN ADDITION, IT MAINTAINS A DATA SERVICE CENTER BUT THIS IS NOT A MAJOR ITEM IN THEIR ACTIVITIES. COMPANY HAS BEEN RESISTING COMPLIANCE ON BASIS ITS "HIGH TECHNOLOGY" AND FACT THAT IBM WORLDWIDE CORPORATE POLICY WOULD MAKE IT IMPOSSIBLE FOR THEM TO TURN OVER MAINTENANCE ON EQUIPMENT IBM OWNS AND LEASES TO A LOCAL FIRM. ONLY APPARENT FLEXIBILITY FROM THIS BASIC POLICY WOULD BE SALE OF TYPEWRITERS AND OTHER OFFICE EQUIPMENT, ALTHOUGH EVEN HERE CORPORATE HEADQUARTERS INITIALLY PREFERRED TO OPERATE AS THEY HAVE DONE IN THE PAST.

ON BASIS THEIR INITIAL APPROACHES TO MINISTER OF TRADE RADIUS PRAWIRO LAST FALL THEY WERE OPTIMISTIC. THE MINISTER HAD SAID (WITHOUT COMMITMENT) THAT THE LAW COULD BE INTERPRETED IN A MANNER FAVORABLE TO IBM AND HAD HOPED FOR A GOVERNMENT DECISION ON THE QUESTION DURING FIRST QUARTER OF 1977. WHILE ACKNOWLEDGING THAT IBM MIGHT CONTINUE ITS BUSINESS ON HIGH TECHNOLOGY BASIS, PRAWIRO POINTED OUT THAT THIS ARGUMENT WOULD PROBABLY NOT WORK FOR TYPEWRITERS, WHICH ARE SOLD, IN CONTRAST TO MORE SOPHISTICATED EQUIPMENT WHICH IS USUALLY RENTED.

PRAWIRO LESS OPTIMISTIC DURING JUNE MEETING WHEN HE LIMITED OFFICIAL USE

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TOLD IBM EXECUTIVES THAT GOI WAS HAVING GREAT DIFFICULTY WITH HIGH TECHNOLOGY ARGUMENT, THAT SALES OF EQUIPMENT ARE TRADE AND THEREFORE COULD NOT BE CARRIED OUT BY IBM, BUT THAT COMPANY COULD PROMOTE LOCALLY PURCHASES WHICH TAKE PLACE OFFSHORE. MINISTER SAID HE HAD REQUESTED SUPREME COURT RULING ON WHETHER OR NOT RENTAL WAS TRADE AND EXPRESSED HIS OWN OPINION THAT IT WAS NOT. HE ALSO SAID THAT INDONESIANS WOULD HAVE TO PROVIDE MAINTENANCE FOR IBM EQUIPMENT EVEN IF SUPREME COURT RULED THAT RENTAL WAS NOT TRADE. THE DATA SERVICE CENTER WOULD ALSO HAVE TO BE TURNED OVER TO INDONESIANS AS WOULD FEE SERVICES SUCH AS TRAINING AND PROGRAMMING.

IBM EXECUTIVES FROM NEW YORK, HONG KONG AND JAKARTA (LED BY VP FOR FAR EAST DIVISION, HOWARD FIGEROA) CALLED ON ME PRIOR TO THEIR MOST RECENT MEETING WITH PRAWIRO ON JULY 7 INDICATING THAT UNDER THE ABOVE SUMMARIZED SCENARIO IBM'S BUSINESS WOULD BE TORN TO PIECES, THAT THE COMPANY COULD COMPROMISE ON SOME ASPECTS BUT NOT ON THE QUESTION OF MAINTENANCE, AND THAT IT SIMPLY COULD NOT RENT WITHOUT PROVIDING SUCH MAINTENANCE. I COUNSELED THEM NOT TO LEAVE PRAWIRO WITH IMPRESSION THAT THERE WAS

NO CHANGE OR FLEXIBILITY IN IBM'S POSITION AS THIS COULD COMPLICATE ANY EFFORTS TO COMPROMISE PRAWIRO MAY HAVE UNDERWAY. SOME GIVE ON THE PART OF IBM WOULD, IN MY VIEW, STRENGTHEN PRAWIRO'S HAND. I SUGGESTED THAT IBM CONTACT ITS POWERFUL LOCAL CUSTOMERS, WHICH INCLUDE HANKAM (MINISTRY OF DEFENSE) AND PERTAMINA. I ALSO INDICATED THAT EMBASSY COULD ASSIST IBM WITH GOI IN MAKING ABSOLUTELY SURE THAT INDONESIANS UNDERSTAND WHAT THEIR (IBM'S) PROBLEM IS.

3. SIEMENS ALSO RESISTING COMPLIANCE BUT THUS FAR APPARENTLY WITHOUT SUCCESS. THEY FEEL EXEMPTION YOUSIFIED UNDER TERMS OF FRG-INDONESIAN INVESTMENT PROTECTION BILATERAL AGREEMENT.
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4. PRESENT STATE OF PLAY:

WHILE MOST RECENT MEETINGS WITH PRAWIRO AND WITH CHAIRMAN INVESTMENT BOARD BARLI HALIM WERE SOMEWHAT POSITIVE, MEETING WITH DIRECTOR GENERAL IMPORTS PANGGBEAN

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WAS NOT. LATTER IMMEDIATELY ASKED FOR A STATEMENT OF IBM'S POSITION WHICH WAS DELIVERED TO HIM JULY 8. IN ITS LETTER TO PANGGABEAN IBM EXPRESSED WILLINGNESS TO DISCUSS HANDING OVER TYPEWRITERS, SUPPLIES AND DICTATION EQUIPMENT, AND ITS DATA CENTER TO INDONESIANS, BUT REITERATED NECESSITY FOR IBM'S RETENTION OF RENTAL AND MAINTENANCE OF SOPHISTICATED MACHINERY.

ON JULY 9 PANGGABEAN INFORMED IBM THAT ALTHOUGH SUPREME COURT HAD NOT YET FORMALLY DELIVERED ITS RULING, IT HAD ADVISED DEPARTMENT OF TRADE INFORMALLY THAT BILATERAL TREATIES WERE MEANINGLESS AND THAT LAW OF THE LAND SHOULD STAND. FURTHERMORE, MINISTRY HAD CONCLUDED THAT RENTAL IS TRADE AND ALTHOUGH THIS WAS NOT YET REFLECTED IN A MINISTRY OF TRADE OFFICIAL POSITION IT SHOULD BE CONSIDERED AS A STATEMENT "OF THE WAY THINGS ARE". PANGGABEAN PROCEEDED TO PUSH IBM HARD ON ESTABLISHING AN INDONESIAN-OWNED COMPANY AND COMMENTED THAT ALTHOUGH PRAWIRO COULD MAKE AN EXCEPTION FOR IBM, THE MINISTER HAD IN FACT RESPONDED THAT HE HAD BEEN LIMITED OFFICIAL USE

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UNABLE TO FIND SUPPORT WITHIN GOI FOR SUCH AN EXCEPTION. IN ADDITION TO PANGGABEAN, THOSE OPPOSED TO IBM'S POSITION INCLUDED BARLI HALIM (WHO ONLY TWO DAYS EARLIER HAD ASSURED IBM OF HIS PERSONAL SUPPORT), MINISTER OF FINANCE WARDHANDA, AND OUTGOING JAKARTA GOVERNOR SADIKIN. PANGGABEAN SUMMED UP INDONESIAN ATTITUDE THAT NO ONE IN GOI WAS ABLE TO UNDERSTAND WHY INDONESIAN LAW SHOULD BE THWARTED TO ACCOMMODATE FOREIGNERS.

5. COMMENTS:

I HAVE GONE INTO SOME DETAIL IN REPORTING THE VARIOUS TWISTS AND TURNS IN THIS CASE, NOT ONLY BECAUSE THEY ARE RATHER TYPICAL OF LOCAL ATMOSPHERE SURROUNDING TRADING LAW BUT ALSO SINCE "RUN AROUND" TREATMENT, UNCERTAINTY, AND IBM'S OWN RATHER POLICIES ARE MOVING SITUATION INTO A SEEMINGLY DEADEND STREET. MOREOVER, WE CANNOT EXCLUDE POSSIBILITY THAT THERE ARE PERHAPS SIGNIFICANT INDONESIAN INDIVIDUALS OR COMPANIES INTERESTED IN GETTING A PIECE OF THE IBM CAKE AND PRESSING GOI NOT TO RELAX TRADING LAW.

IBM LOCAL REP, ON INSTRUCTION FROM THEIR REGIONAL REP IN HONG KONG, HAS NOW ASKED FOR MY INTERVENTION WITH GOI. WE RAISED ISSUES WITH PRAWIRO IN FEBRUARY AND MAY AND HE KNOWS OF OUR GENERAL INTEREST. IN REFLECTING ON IBM'S REQUEST FOR MY ASSISTANCE, I AM MINDFUL THAT

FOREIGN TRADING COMPANIES IN INDONESIA ARE, TO THE BEST OF OUR KNOWLEDGE, FINDING WAYS TO ADJUST TO THE INDONESIAN LEGAL SITUATION ALTHOUGH THIS MAY NOT NECESSARILY BE A VALID PRECEDENT FOR IBM'S COMPUTER BUSINESS. FURTHERMORE, IBM'S TWO STRONGEST COMPETITORS HERE, NCR AND UNIVAC, BOTH OPERATE THROUGH AGENTS.

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I AM OF COURSE PERFECTLY PREPARED TO SEE PRAWIRO AND POINT OUT TO HIM THE THE WITHDRAWAL OF IBM FROM INDONESIA (WHICH, ACCORDING TO OUR INFORMATION HERE, IS IN PROSPECT IF GOI REFUSES TO PASS FAVORABLY ON COMPUTER RENTALS AND MAINTENANCE) COULD HAVE CONSIDERABLE IMPACT ON COUNTRY'S SOMEWHAT SHAKY REPUTATION FOR FOREIGN BUSINESS AND INVESTMENT. HOWEVER, BEFORE MAKING SUCH AN APPROACH I WANT TO BE MORE SURE THAT THIS WAS REALLY IBM'S INTENTION AND WOULD APPRECIATE DEPARTMENT'S VIEW ON OUR MAKING APPROACH ON WHAT APPEARS TO BE PRECULIAR PROBLEM OF ON AMERICAN COMPANY.

IT WOULD THEREFORE BE HELPFUL FOR US IF DEPARTMENT COULD MAKE DISCREET CHECK WITH IBM CORPORATE HEADQUARTERS ON FOLLOWING QUESTIONS:

(A) DOES IBM'S WORLDWIDE POLICY IN FACT PRECLUDE USE OF LOCAL AGENTS OR INDIGENOUS FIRMS IN THEIR MARKETING OF SOPHISTICATED EQUIPMENT, OR HAVE THERE BEEN SOME EXCEPTIONS TO THIS POLICY IN OTHER COUNTRIES?

(B) IS IBM REALLY CONTEMPLATING TO TERMINATE ITS OPERATIONS HERE, BEARING IN MIND THAT INDONESIA CONTINUES TO HAVE CONSIDERABLE LONG-RANGE MARKET POTENTIAL AND FACT THAT COMPANY MIGHT ENCOUNTER DIFFICULTY IN WITHDRAWING EQUIPMENT CURRENTLY IN-COUNTRY IF SUCH DECISION WERE MADE?

IN DISCUSSING MATTER WITH IBM, RECOMMEND THAT DEPARTMENT SUGGEST TO THEM THAT THEY ALSO TAKE UP ISSUE WITH AMBASSADOR RUSMIN IN WASHINGTON.

6. ACTION REQUESTED: WOULD APPRECIATE DEPARTMENT'S REPLY TO THIS MESSAGE AND PARTICULARLY TO QUESTIONS RAISED IN PARA 5 AS PROMPTLY AS POSSIBLE SINCE I WOULD

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HOPE TO SEE PRAWIRO DURING THE NEXT TWO WEEKS.
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Message Attributes

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